

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARILYSE YEAGER and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Minneapolis, Minn.

*Docket No. 96-2502; Submitted on the Record;
Issued July 29, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has more than a 10 percent permanent impairment to her right arm.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained an elbow fracture and a shoulder contusion in the performance of duty on September 20, 1993. By decision dated October 30, 1995, the Office issued a schedule award for a 10 percent permanent impairment to the right arm.¹ The period of the award covered 31.20 weeks, May 29, 1995 to January 2, 1996.

The Board has reviewed the record and finds that appellant does not have more than a 10 percent permanent impairment to the right arm.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.² Neither the Act nor the regulations specify the manner, in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.³

¹ The record contains an Office decision dated August 30, 1996 with respect to a request for reconsideration. Since this decision was issued after appellant filed an appeal with the Board on August 16, 1996 and involves the same issue on appeal, it is null and void; *see Douglas E. Billings*, 41 ECAB 880 (1990).

² 5 U.S.C. § 8107. This section enumerates specific members or functions of the body, for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.304(b).

³ *A. George Lampo*, 45 ECAB 441 (1994).

In this case an attending physician, Dr. James A. Amlicke, an orthopedic surgeon, submitted reports dated May 2 and August 17, 1995, regarding appellant's right arm and shoulder condition. The Office referred the medical evidence to an Office medical adviser for an opinion as to the percentage of permanent impairment under the A.M.A., *Guides*. In a memorandum dated September 29, 1995, the medical adviser indicated that appellant had a 1 percent impairment for loss of range of motion, based on Dr. Amlicke's reported finding that appellant lacked 15 degrees of shoulder flexion from the full overhead position. This is in accord with the relevant provisions of the A.M.A., *Guides* concerning shoulder flexion.⁴ With respect to motor deficits, the medical adviser identified the axillary nerve, which has a maximum impairment of 35 percent for loss of function due to motor deficit.⁵ The medical adviser graded the impairment at 25 percent of the maximum, for a 9 percent impairment.⁶ This again is in accord with Dr. Amlicke's findings.

The medical adviser also noted other findings by Dr. Amlicke did not indicate any additional impairments, such as the absence of atrophy, a full range of motion in the elbow, and a completely healed fracture and he concluded that appellant had a 10 percent permanent impairment to the right arm. The Board finds no indication that the medical evidence of record entitles appellant to more than a 10 percent permanent impairment in this case.⁷

The Board notes that on appeal appellant's primary contention is that since her condition is permanent, she should not be limited to 31.20 weeks of compensation. Under the Act, however, the number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). Under this schedule the maximum number of weeks compensation for permanent impairment of the arm is 312; appellant is therefore entitled to 10 percent of 312, or 31.20 weeks of compensation. It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.⁸ Appellant was therefore paid 31.20 weeks of compensation from May 29, 1995.

⁴ A.M.A., *Guides* (4th ed. 1993), 43, figure 38. For shoulder flexion of 165 degrees, figure 38 provides a 1 percent impairment.

⁵ *Id.*, 54, Table 15.

⁶ *Id.*, 49, Table 12.

⁷ The Board notes that it can only consider evidence that was before the Office at the time of the October 30, 1995 decision. 20 C.F.R. § 501.2(c).

⁸ *Albert Valverde*, 36 ECAB 233, 237 (1984).

The decision of the Office of Workers' Compensation Programs dated October 30, 1995 is affirmed.

Dated, Washington, D.C.
July 29, 1998

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member